

Federal Communications Commission

DA 01-445

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of **WVED**)
)
Amendment of Section 73.202(b),) MM Docket No. 99-233
Table of Allotments,) RM-9662
FM Broadcast Stations.) RM-9828
(Bridgeport, Bonham, Graham,)
Palestine, Price, Range & Stephenville,)
Texas, and Ardmore, Lawton,)
Tecumseh & Fort Towson, Oklahoma)¹)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 7, 2000

Released: February 16, 2000

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Graham Tollway Broadcasting Company ("Graham Tollway"), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 7178 (1999), requesting the allotment of Channel 253A at Graham, Texas. Graham Tollway filed comments supporting the allotment at Graham. North Texas Radio Group, L.P. ("North Texas") filed a counterproposal.² Reply comments were filed by North Texas and Graham Tollway. Graham Tollway and Elizabeth Smith ("Smith") filed comments in response to the counterproposal. Late filed comments were received from Journal Broadcast Corporation ("Journal"), North Texas and Smith.

Background and Comments

2. **The Counterproposal.** North Texas filed a counterproposal for the purpose of upgrading its Station KBOC(FM) at Bridgeport, Texas, from Channel 252A to Channel 252C. To accommodate this proposal, North Texas has requested one upgrade, three changes of community of license, four downgrades and a new allotment which will provide a first local service. Specifically, in its counterproposal, North Texas requests the substitution of Channel 251A for Channel 251C1 at Lawton, Oklahoma, and modification of the license for Station KJMZ to accommodate the allotment of Channel 252C at Bridgeport, Texas. North Texas states that by

¹ The communities of Bridgeport, Bonham, Palestine, Price, Range & Stephenville, Texas, and Ardmore, Lawton, Tecumseh & Fort Towson, Oklahoma have been added to the caption.

² The counterproposal filed by North Texas was put on Public Notice on March 3, 2000, Report No. 2389 (RM-9828). The counterproposal was originally placed on public notice on February 23, 2000, referencing the wrong docket number. The public notice released on March 3, 2000, explained the error and gave parties 15 days from March 3, 2000, to file comments rather than 15 days from February 23, 2000.

increasing Station KJMZ's HAAT and replacing its current horizontally-polarized antenna with a circularly-polarized antenna, service to the community will be improved with the lower class channel. The licensee of Station KJMZ, Perry Broadcasting of Lawton, Inc., has agreed to a facility change. North Texas further requests the substitution of Channel 253A for Channel 252A at Stephenville, Texas, reallocation of the channel to Ranger, Texas, as a first local service, and modification of the license for Station KCUB. The reallocation will not deprive Stephenville of its sole local service as Station KSTV(AM) is licensed to Stephenville. North Texas argues that the requested channel and community change will result in a more efficient use of the radio spectrum as Station KCUB is grandfathered at 3 KW at Stephenville. Channel 253A at Ranger meets the Commission's spacing requirements, provides city grade coverage, and can operate at 6 KW. The licensee of Station KCUB, Reese Broadcasting LLC, has agreed to the facility change requested by North Texas. North Texas has requested the allocation of Channel 253A at Price, Texas, as a first local service. North Texas alleges that Price is a community for allocation purposes and that the channel can be allocated in compliance with the Commission's spacing requirements. Although North Texas has committed to filing an application for Channel 253A at Price, it has also stated that denying an allocation at Price will not impact the balance of this counterproposal. North Texas, licensee of Station KYYK, also proposes to downgrade Station KYYK, Palestine, Texas from Channel 252C2 to Channel 252C3 to accommodate the upgrade at Bridgeport and to improve service at Palestine. According to Texas Radio, by moving KYYK's transmitter site, a Class C3 facility will actually improve service to the community. The downgrade and site change for Station KYYK would also permit the allocation of Channel 253A at Price, Texas. North Texas further proposes the substitution of Channel 251A for Channel 253C3 at Ardmore, Oklahoma, reallocation of Channel 251A from Ardmore, Oklahoma, to Tecumseh, Oklahoma, as a first local service, and modification of the license for Station KACO to specify operation at Tecumseh. The licensee of Station KACO has agreed to a facility change. The deletion of Channel 253C3 at Ardmore will not deprive the community of local service as stations KVSQ(AM), KKAJ(FM) and KLCU(FM) are licensed to Ardmore. Finally, North Texas, licensee of Station KFYZ, Bonham, proposes to substitute Channel 262A for Channel 253C3 at Bonham, Texas, reallocate the channel to Fort Towson, Oklahoma, and modify the license for Station KFYZ to specify operation on Channel 262A at Fort Towson. North Texas states that the reallocation will not deprive Bonham of local service as Station KFYN(AM) is licensed to the community.

3. **Withdrawal.** On June 16, 2000, Graham Tollway Broadcasting Company withdrew its proposal to allocate Channel 253A at Graham, Texas. In compliance with Section 1.420(j) of the Commission's Rules, Graham Tollway provided an affidavit stating that it would be reimbursed for expenses incurred in processing the rulemaking petition for Graham, Texas, and will receive no other consideration in excess of legitimate expenses for the dismissal of its petition. Therefore, since Graham Tollway has withdrawn from the proceeding and no other interest has been expressed for an allocation at Graham, no further consideration will be given to the community of Graham or to comments filed opposing an allocation in the community.

4. **Objection.** Elizabeth Smith ("Smith") submitted comments in response to the counterproposal filed by North Texas Radio Group. Smith objects to the proposed substitution of channels at Ardmore, 251A for 253C3, modification of the license for Station KACO and reallocation of Channel 251A to Tecumseh, Oklahoma. According to Smith, the proposed reallocation should be disallowed as the reference coordinates of the two communities is well beyond the radius of mutual exclusivity required by Section 1.420(i) of the Rules. Smith further objects to the proposed channel substitution at Bonham, Texas, to substitute Channel 262A for Channel 253C3, and change of city of license for Station KFYZ from Bonham, Texas, to Fort Towson, Oklahoma. Here Smith argues that the proposed changes are not mutually exclusive with the existing KFYZ facility as the proposed change is nine channels removed from the existing channel. Smith also points out that the allotment of Channel 262A at Fort Towson, Oklahoma, is short spaced to a proposal filed by McCurtain County Wireless requesting the allotment of Channel 263C3 at Valliant, Oklahoma.³ Smith argues that if North Texas wishes to relocate Stations KFYZ, Bonham and Station KACO, Ardmore, to accommodate its proposal for Bridgeport, it should modify its proposal to substitute channels which are mutually exclusive with the stations' present facilities.

Discussion

6. Initially, we recognize that the proposed allotment of Channel 252C at Bridgeport is in conflict with the proposed allotment of Channel 253A at Graham, Texas. Although this counterproposal was placed on public notice, the staff now recognizes that the counterproposal is deficient in three key respects and must be dismissed.

7. First, a staff engineering analysis reveals that Channel 252C at Bridgeport at the requested site is short-spaced to a minor change application filed by Station KASZ, Gatesville, Texas, for Channel 252A (BPH-19990527ID). The application for Channel 252A, Gatesville, was filed on May 27, 1999, and is protected from conflicting rulemaking proposals on that date. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, MM Docket No. 91-348, 7 FCC Rcd 4917 (1992). The North Texas counterproposal was filed on August 16, 1999. Our staff analysis has determined that the separation between the two facilities is 221.3 kilometers whereas the required separation is 226 kilometers. While the Gatesville, Texas facility has protected Station KBOC, Channel 252A, Bridgeport, under Section 73.215 of the Rules, the separation between proposed Channel 252C, Bridgeport, and the Gatesville facility does not meet the allotment spacing requirements. Although North Texas states that Gatesville needs to be protected only in accordance with the contour requirements specified in Section 73.215 of the Commission's Rules instead of the minimum mileage separation requirements specified in Section 73.207 of the Rules, this is incorrect. See Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, MM Docket No. 87-121, 4 FCC Rcd 1681 (1989). This document clearly states that all proposals for channel allotments must meet the minimum distance

³ The proposal for Valliant, Oklahoma, was dismissed by letter on December 3, 1999.

separations of Section 73.207 of our Rules with respect to other existing and prospective stations. The use of contour protection is not permitted at the rulemaking stage.

8. Second, North Texas has requested a nonadjacent channel substitution and a change of community of license for Station KFYZ from Bonham on Channel 252C3 to Fort Towson on Channel 262A. The Report and Order in the Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), specifically states that "the change of community procedure [set forth in §1.420(i) of the Rules] is limited to situations in which the new allotment would be mutually exclusive with the existing allotment and will not apply to nonadjacent upgrades." Since Channel 252C3, Bonham, is not mutually exclusive with nonadjacent Channel 262A, Fort Towson, the request to change the community of license is not acceptable and violates Section 1.420(i) of the Rules. Although North Texas appears to argue that this lack of mutual exclusivity can be overlooked because a first local service can be made at Price as a result of this action, we disagree. The change of community rule clearly requires mutual exclusivity regardless of any public interest benefits. Further, North Texas has not cited any language in the change of community proceeding or any case to support its position.

9. Third, North Texas has proposed the substitution of adjacent Channel 251A for Channel 253C3 at Ardmore, Oklahoma, and reallocation of Channel 251A to Tecumseh, Oklahoma. Although this aspect of the counterproposal does use adjacent channels, the reallocation does not meet the requirements of Section 1.420(i) of the Commission's Rules as Channel 251A at Tecumseh is not short spaced with Channel 253C3 at Ardmore. While North Texas again argues that this lack of mutual exclusivity can be ignored because the change of community proposal for Tecumseh on Channel 251A is mutually exclusive with the downgrade of Channel 251A at Lawton, we disagree. The fact that the Tecumseh proposal is mutually exclusive with other aspects of North Texas' counterproposal does not justify waiving the basic requirements of §1.420(i) that a change of community proposal must be mutually exclusive with itself. Therefore, the reallocation cannot be considered.

10. IT IS FURTHER ORDERED, That the petition for Rule Making filed by Graham Tollway Broadcasting Company (RM-9662), IS DISMISSED.

11. IT IS FURTHER ORDERED, That the counterproposal filed by North Texas Radio Group, L.P. (RM-9828) IS DISMISSED.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau